

Hon. Benjamin J. Settle

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**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON<sup>1</sup>**

L.K.M., individually, and on behalf of her  
daughter C.K.M., and J.M.;

Plaintiffs,

v.

BETHEL SCHOOL DISTRICT; THOMAS  
SIEGEL, in his individual capacity; ROBERT  
MAXWELL, in his individual capacity;  
NANCY McKEEMAN, in her individual  
capacity; MEGAN NELSON, in her individual  
capacity; CLIFFORD ANDERSON, in his  
individual capacity; TOM GIFFORD, in his  
individual capacity; HEIDI MILLER, in her  
individual capacity; and JOHN/JANE DOES 1-  
5, in their individual capacities;

Defendants.

NO. CV: 18-5345-BJS

**DEFENDANTS ANSWER TO  
AMENDED COMPLAINT FOR  
DAMAGES**

COMES NOW the Defendants, by and through its attorney of record, Jerry J. Moberg and  
Jerry Moberg & Associates, PS, and enters this answer to Plaintiff's complaint as follows:

**I. PARTIES**

1.1. In answer to the allegations in paragraph 1.1 of the Complaint the Defendants **ADMIT** the  
same.

<sup>1</sup> The amended complaint was filed before the case was removed to this court and bears the caption  
of the Pierce County Superior Court.

1.2. In answer to the allegations in paragraph 1.2 of the Complaint the Defendants **ADMIT** the same.

1.3. In answer to the allegations in paragraph 1.3 of the Complaint Defendants **ADMIT** that it is a school district organized under the laws of Washington and authorized to do business in the State; has its primary place of business in Pierce County but **DENY** each and every allegation in this paragraph.

1.4. In answer to the allegations in paragraph 1.4 of the Complaint the Defendants **ADMIT** that it had supervision and control of CKM while she was in attendance at school but **DENY** each and every other allegation in this paragraph.

1.5. In answer to the allegations in paragraph 1.5 of the Complaint the Defendants **ADMIT** that Thomas Siegel was the Superintendent of Bethel when CKM attended the Bethel School District but **DENY** each and every other allegation contained in this paragraph.

1.6. In answer to the allegations in paragraph 1.6 of the Complaint the Defendants **ADMIT** that Robert Maxwell was the Director of Special Services for part of the time when CKM attended the Bethel School District but **DENY** each and every other allegation contained in this paragraph.

1.7. In answer to the allegations in paragraph 1.7 of the Complaint the Defendants **ADMIT** that Nancy McKeeman was an employee of the District with some duties regarding Individualized Education Plans (IEP) but **DENY** each and every other allegation contained in this paragraph.

1.8. In answer to the allegations in paragraph 1.8 of the Complaint the Defendants **ADMIT** that Megan Nelson was an Education Coordinator for Bethel when CKM attended the Bethel School District but **DENY** each and every other allegation contained in this paragraph.

1.9. In answer to the allegations in paragraph 1.9 of the Complaint the Defendants **ADMIT** that Clifford Anderson was the Principal of Bethel High School during part of the time that CKM attended the Bethel School District but **DENY** each and every other allegation contained in this paragraph.

1.10. In answer to the allegations in paragraph 1.10 of the Complaint the Defendants **ADMIT** that Tom Gifford was the Vice Principal of Bethel High School during the 2012-13 school year but **DENY** each and every other allegation contained in this paragraph.

1.11. In answer to the allegations in paragraph 1.11 of the Complaint the Defendants **ADMIT** that Heidi Miller was a special education teacher at Bethel High School during the 2012-13 school year but **DENY** each and every other allegation contained in this paragraph.

1.12. In answer to the allegations in paragraph 1.12 of the Complaint the Defendants are unable to determine the identity of the “Doe” Defendants, and therefore **DENY** each and every allegation contained in this paragraph.

## II. JURISDICTION AND VENUE

2.1 In answer to the allegations in paragraph 2.1 of the Complaint the Defendants **ADMIT** the same.

2.2 In answer to the allegations in paragraph 2.2 of the Complaint the Defendants **DENY** that jurisdiction and venue are in Pierce County Superior Court and assert that since this case was removed to the United State District Court for the Western District of Washington venue and jurisdiction are properly before this court.

2.3 In answer to the allegations in paragraph 2.3 of the Complaint the Defendants **ADMIT** the same.

**III. FACTS**

3.1 In answer to the allegations in paragraph 3.1 of the Complaint the Defendants **ADMIT** the same.

3.2 In answer to the allegations in paragraph 3.2 of the Complaint the Defendants **DENY** the same.

3.3 In answer to the allegations in paragraph 3.3 of the Complaint the Defendants **DENY** the same.

3.4 In answer to the allegations in paragraph 3.4 of the Complaint the Defendants **DENY** the same.

3.5 In answer to the allegations in paragraph 3.5 of the Complaint the Defendants **DENY** the same.

3.6 The complaint does not include a paragraph 3.6.

3.7 In answer to the allegations in paragraph 3.7 of the Complaint the Defendants **ADMIT** that DM was emergency expelled but **DENY** the remaining allegations.

3.8 In answer to the allegations in paragraph 3.8 of the Complaint the Defendants **ADMIT** that after his expulsion from Clover Park DM transferred to Bethel but **DENY** each and every other allegation in this paragraph.

3.9 In answer to the allegations in paragraph 3.9 of the Complaint the Defendants **ADMIT** that around the time of DM's expulsion William Coats met with Robert Maxwell but **DENY** each and every other allegation of this paragraph.

3.10 In answer to the allegations in paragraph 3.10 of the Complaint the Defendants **DENY** the same.

1 3.11 In answer to the allegations in paragraph 3.11 of the Complaint the Defendants **DENY** the  
2 same.

3 3.12 In answer to the allegations in paragraph 3.12 of the Complaint the Defendants **DENY** the  
4 same.

5 3.13 In answer to the allegations in paragraph 3.13 of the Complaint the Defendants **DENY** the  
6 same.

7 3.14 In answer to the allegations in paragraph 3.14 of the Complaint the Defendants **ADMIT**  
8 that on enrollment with Bethel Nancy McKeeman participated in the creation of an  
9 Individualized Education Plan (IEP) for DM but **DENY** each and every other allegation  
10 contained in this paragraph.

11 3.15 In answer to the allegations in paragraph 3.15 of the Complaint the Defendants **ADMIT**  
12 that on enrollment with Bethel Megan Nelson participated in the creation of an  
13 Individualized Education Plan (IEP) for DM but **DENY** each and every other allegation  
14 contained in this paragraph.

15 3.16 In answer to the allegations in paragraph 3.16 of the Complaint the Defendants **ADMIT**  
16 that DM was placed in the Special Education class at Bethel High School with Special  
17 Education teacher Heidi Miller and that CKM was also in her special education class  
18 because she had special needs **DENY** each and every other allegation in this paragraph.

19 3.17 In answer to the allegations in paragraph 3.17 of the Complaint the Defendants **ADMIT**  
20 that Defendant Miller and the paraeducators and aides in her class maintained an  
21 observational log on DM and other students but **DENY** each and every other allegation in  
22 this paragraph.

1 3.18 In answer to the allegations in paragraph 3.18 of the Complaint the Defendants **ADMIT** the  
2 same.

3 3.19 In answer to the allegations in paragraph 3.19 of the Complaint the Defendants **ADMIT** the  
4 same.

5 3.20 In answer to the allegations in paragraph 3.20 of the Complaint the Defendants **ADMIT** the  
6 same.

7 3.21 In answer to the allegations in paragraph 3.21 of the Complaint the Defendants **ADMIT** the  
8 same.

9 3.22 In answer to the allegations in paragraph 3.22 of the Complaint the Defendants **ADMIT** the  
10 same.

11 3.23 In answer to the allegations in paragraph 3.23 of the Complaint the Defendants **ADMIT** the  
12 same.

13 3.24 In answer to the allegations in paragraph 3.24 of the Complaint the Defendants **ADMIT** the  
14 same.

15 3.25 In answer to the allegations in paragraph 3.25 of the Complaint the Defendants **ADMIT** the  
16 same.

17 3.26 In answer to the allegations in paragraph 3.26 of the Complaint the Defendants **DENY** the  
18 same.

19 3.27 In answer to the allegations in paragraph 3.27 of the Complaint the Defendants **ADMIT**  
20 that DM remained in Ms. Miller's classroom but **DENY** each and every other allegation set  
21 forth in this paragraph.  
22  
23  
24

1 3.28 In answer to the allegations in paragraph 3.28 of the Complaint the Defendants **ADMIT**  
2 that she communicated some matters regarding DM to Defendants Nelson and Defendant  
3 Gifford but **DENY** each and every other allegation set forth in this paragraph.

4 3.29 In answer to the allegations in paragraph 3.29 of the Complaint the Defendants **ADMIT**  
5 that DM remained in Ms. Miller's classroom but **DENY** each and every other allegation set  
6 forth in this paragraph.

7 3.30 In answer to the allegations in paragraph 3.30 of the Complaint the Defendants **DENY** the  
8 same.

9 3.31 In answer to the allegations in paragraph 3.31 of the Complaint the Defendants **ADMIT**  
10 that CKM was disciplined in October 2012 for running away from the area she was assigned  
11 to but **DENY** each and every other allegation set forth in this paragraph.

12 3.32 In answer to the allegations in paragraph 3.2 of the Complaint the Defendants **DENY** the  
13 same.

#### 14 IV. CAUSES OF ACTION

15 4.1 In answer to the allegations in paragraph 4.1 of the Complaint the Defendants **ADMIT**  
16 CKM attended school in the Bethl District and that the District has duties under the law  
17 regarding students but **DENY** each and every other allegation set forth in this paragraph.

18 4.2 In answer to the allegations in paragraph 4.2 of the Complaint the Defendants **ADMIT**  
19 that while attending school the District had custody of CKM and under the law has duties  
20 pertaining to students but **DENY** each and every other allegation set forth in this paragraph.

21 4.3 In answer to the allegations in paragraph 4.3 of the Complaint the Defendants **DENY** the  
22 same.

1 4.4 In answer to the allegations in paragraph 4.4 of the Complaint the Defendants **DENY** the  
2 same.

3 4.5 In answer to the allegations in paragraph 4.5 of the Complaint the Defendants **DENY** the  
4 same.

5 4.6 In answer to the allegations in paragraph 4.6 of the Complaint the Defendants **ADMIT**  
6 that Defendant Bethel operated the Bethel High School but **DENY** each and every other  
7 allegation set forth in this paragraph.

8 4.7 In answer to the allegations in paragraph 4.7 of the Complaint the Defendants **DENY** the  
9 same.

10 4.8 In answer to the allegations in paragraph 4.8 of the Complaint the Defendants **DENY** the  
11 same.

12 4.9 In answer to the allegations in paragraph 4.9 of the Complaint the Defendants **DENY** the  
13 same.

14 **B. VIOLATION OF WASHINGTON'S LAW AGAINST DISCRIMINATION**  
15 **(WLAD), RCW 49.60 – ALL DEFENDANTS**

16 4.10 In answer to the allegations in paragraph 4.10 of the Complaint the Defendants **ADMIT**  
17 that RCW 49.60 is commonly referred to as the Washington Law Against Discrimination and  
18 RCW 49.60.030 contains language related to discrimination but **DENY** each and every other  
19 allegation set forth in this paragraph.

20 4.11 In answer to the allegations in paragraph 4.11 of the Complaint the Defendants **DENY** the  
21 same.

22 4.12 In answer to the allegations in paragraph 4.12 of the Complaint the Defendants **DENY** the  
23 same.



1 4.13 In answer to the allegations in paragraph 4.13 of the Complaint the Defendants **DENY** the  
2 same.

3 **C. VIOLATION OF C.K.M.'S CIVIL RIGHTS UNDER THE FOURTEENTH**  
4 **AMENDMENT AND ENFORCED BY 42 U.S.C. § 1983 – DEFENDANTS**  
5 **SIEGEL, MAXWELL, McKEEMAN, NELSON, ANDERSON, GIFFORD,**  
6 **MILLER AND JOHN/JANE DOES 1-5.**

7 4.14 In answer to the allegations in paragraph 4.14 of the Complaint the Defendants **ADMIT**  
8 that the 14<sup>th</sup> Amendment Due Process Clause applies to the states and provides citizens with  
9 certain rights and protections but **DENY** each and every other allegation set forth in this  
10 paragraph.

11 4.15 In answer to the allegations in paragraph 4.15 of the Complaint the Defendants **DENY** the  
12 same.

13 4.16 In answer to the allegations in paragraph 4.16 of the Complaint the Defendants **DENY** the  
14 same.

15 4.17 In answer to the allegations in paragraph 4.17 of the Complaint the Defendants **DENY** the  
16 same.

17 4.18 In answer to the allegations in paragraph 4.18 of the Complaint the Defendants **DENY** the  
18 same.

19 4.19 In answer to the allegations in paragraph 4.19 of the Complaint the Defendants **DENY** the  
20 same.

21 4.20 In answer to the allegations in paragraph 4.20 of the Complaint the Defendants **DENY** the  
22 same.

23 **D. VIOLATION OF C.K.M.'S CIVIL RIGHTS UNDER THE FOURTEENTH**  
24 **AMENDMENT AND ENFORCED BY 42 U.S.C. § 1983 UNDER MONELL–**  
**DEFENDANT BETHEL**

1 4.21 In answer to the allegations in paragraph 4.21 of the Complaint the Defendants **ADMIT**  
2 that Defendant Bethel has various rights and responsibilities related to its policies, customs  
3 and practices but **DENY** each and every other allegation set forth in this paragraph.

4 4.22 In answer to the allegations in paragraph 4.22 of the Complaint the Defendants **DENY** the  
5 same.

6 4.23 In answer to the allegations in paragraph 4.23 of the Complaint the Defendants **DENY** the  
7 same.

8 **E. VIOLATION OF C.K.M.'S RIGHTS UNDER TITLE IX AND SECTION 1983**  
9 **THROUGH THE EQUAL PROTECTION CLAUSE– ALL DEFENDANTS**

10 4.24 In answer to the allegations in paragraph 4.24 of the Complaint the Defendants **DENY** the  
11 same.

12 4.25 In answer to the allegations in paragraph 4.25 of the Complaint the Defendants **DENY** the  
13 same.

14 4.26 In answer to the allegations in paragraph 4.26 of the Complaint the Defendants **DENY** the  
15 same.

16 4.27 In answer to the allegations in paragraph 4.27 of the Complaint the Defendants **DENY** the  
17 same.

18 4.28 In answer to the allegations in paragraph 4.28 appears to be the Plaintiffs summary of their  
19 view of a legal principal and does not require a response.

20 4.29 In answer to the allegations in paragraph 4.29 of the Complaint the Defendants **DENY** the  
21 same.

22 4.30 In answer to the allegations in paragraph 4.30 of the Complaint the Defendants **DENY** the  
23 same.

1 4.31 In answer to the allegations in paragraph 4.31 of the Complaint the Defendants **DENY** the  
2 same.

3 **V. DAMAGES**

4 5.1 In answer to the allegations in paragraph 5.1 of the Complaint the Defendants **ADMIT**  
5 Plaintiffs have brough various claims for damages but **DENY** each and every other allegation  
6 set forth in this paragraph.

7 5.2 In answer to the allegations in paragraph 5.2 of the Complaint the Defendants **DENY** the  
8 same.

9 5.3 In answer to the allegations in paragraph 5.3 of the Complaint the Defendants **DENY** the  
10 same.

11 5.4 Plaintiffs remaining paragraphs VI and VII of their complaint demand a jury and set forth a  
12 prayer for relief and do not require a response. To the extent a response might be required  
13 Defendants **DENY** the same.

14 **VI. JURY DEMAND**

15 **6.1** Defendants join in Plaintiff's demand that this case be tried by a jury.

16 **VII. PRAYER FOR RELIEF**

17 Defendants are not required to respond to the prayer for relief but deny that the Plaintiffs  
18 are entitled to any of the relief prayed for in this complaint.

19 BY WAY OF FURTHER ANSWER TO PLAINTIFFS' COMPLAINT, AND IN THE  
20 FORM OF AN AFFIRMATIVE DEFENSE, DEFENDANTS SETS FORTH THE FOLLOWING:

- 21 1. **INJURIES CAUSED BY THE INTENTIONAL ACTS OF OTHERS:** The  
22 injuries and damages alleged by the plaintiffs were the caused by the intentional acts  
23 of DM and the Defendants are not responsible under Washington law for the damages

caused by the intentional acts of others

2. **FAILURE TO MITIGATE:** On information and belief the defendants assert that plaintiffs have failed to mitigate their damages by failing to seek proper psychological or other professional assistance for themselves and CKM.
3. **FAILURE TO STATE A CLAIM:** The Complaint fails to state a claim upon which relief can be granted.
4. **PUBLIC DUTY DOCTRINE:** Some of the duties claimed to be owed by defendant in this lawsuit are public duties owed to all and cannot be the basis for a negligence claim against the municipal defendant.
5. **QUALIFIED IMMUNITY:** The individually named defendants are entitled to qualified immunity from suit and are legally immune from liability in this action.
6. **STATUTE OF LIMITATIONS:** The Plaintiffs federal claims against the Defendants are or maybe barred by the appropriate statute of limitations.

WHEREFORE, Defendant having fully answered Plaintiffs' Complaint herein, pray that the same be dismissed with prejudice and held for naught, Defendants be awarded attorney fees, costs and disbursements herein, and for any further relief deemed just and equitable by the Court.

DATED August 31, 2021.

JERRY MOBERG & ASSOCIATES, PS

/s/ Jerry J. Moberg

Jerry J. Moberg, WSBA #5282  
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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DATED this 31st day of August 2021.

/s/ Dawn Severin

Dawn Severin, Senior Paralegal